

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MOLLY WILLIAMS)	
Claimant)	
VS.)	
)	
TRIPLE CHECK BUSINESS SERVICE)	
Respondent)	Docket No. 265,280
)	
AND)	
)	
WORKERS' COMPENSATION FUND)	

ORDER

Respondent requests review of Administrative Law Judge (ALJ) Nelsonna Potts Barnes' August 29, 2002 Order.

ISSUES

Respondent sought an order setting aside the ALJ's October 11, 2001 Order which awarded penalties against respondent for its failure to pay benefits previously awarded claimant. Judge Barnes denied respondent's request finding that "The order of October 11, 2001 is now a final order and not subject to modification." In its Application for Review and Docketing Statement, respondent stated "The issue which Respondent wishes to have reviewed relates to the question of whether Respondent's motion to set aside the penalty order of October 11, 2002, should be sustained on the grounds that the Order for penalties was improperly obtained."

Claimant argues that the ALJ's Order should be affirmed. The Kansas Workers' Compensation Fund did not file a brief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On October 11, 2001, Judge Barnes entered an Order that respondent pay certain past due medical expenses and previously ordered temporary total disability compensation. In addition, respondent was ordered to pay penalties. That order was not appealed and is, therefore, a final order.¹

On July 29, 2002, respondent filed a Motion to Set Aside Order for Penalties of October 11, 2001. A hearing before the ALJ was held on August 27, 2002. Thereafter, on August 29, 2002, Judge Barnes issued her decision denying respondent's motion.

An award of penalties under K.S.A. 44-512a is not a preliminary award, but instead is a final order.² It is subject to de novo review on the record as a final order provided written request for review is filed within ten days from the order's effective date.³ Respondent did not appeal the October 11, 2001, Order. Therefore, that Order is final and not subject to appeal or review. Furthermore, the ALJ and Board may only exercise those powers specifically provided by statute.⁴ The Workers Compensation Act does not provide for motions for a new trial or re-hearing.⁵ Respondent does not allege that it was denied notice of hearing or due process of law.⁶

Accordingly, the ALJ's denial of respondent's motion was proper.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order dated August 29, 2002, entered by Administrative Law Judge Nelsonna Potts Barnes, should be, and is hereby affirmed.

IT IS SO ORDERED.

¹ See *Gray v. Hercules Powder Co.*, 160 Kan. 767, 772, 165 P.2d 447 (1946).

² *Waln v. Clarkson Constr. Co.*, 18 Kan. App. 2d 729, 861 P.2d 1355 (1993); *Stout v. Stixon Petroleum*, 17 Kan. App. 2d 195, 836 P.2d 1185, rev. denied 251 Kan. 942 (1992).

³ K.S.A. 44-551(b)(1); K.S.A. 44-555c(a).

⁴ *Acosta v. National Beef Packing Co.*, ___ Kan. ___, 44 P.3d 330 (2002).

⁵ *Waln*, *supra*.

⁶ See *Nguyen v. IBP, Inc.*, 266 Kan. 580, 972 P.2d 747 (1999).

Dated this _____ day of November 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John L. Carmichael, Attorney for Claimant
 Norman I Cooley, Attorney for Respondent
 Garry L. Howard, Attorney for Workers Compensation Fund
 Nelsonna Potts Barnes, Administrative Law Judge
 Director, Division of Workers Compensation

MOLLY WILLIAMS

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